CF0000062743

(2)

न्यायालय श्रीमान उच्च न्यायालय मध्यप्रदेश जबलपुर M.P. Division Bench (Criminal)

अ0प्र0क्र0- 2966 /99

आवेदक: लखमू भाटू 29/08/00.

लखन आत्मज भाटू गढ़िया भाटिया

उम्र लगभग 35 साल, साकिन-कुरेंगा , डिटका पारा, थाना प्रेजुर जिला- बस्तर म0प्र0 ।

अपीलार्थी के अधि

अपराधिक अपील अंतर्गत धारा 374, सी0आर0पी0सी0

अपील विरूद्ध निर्णय दि0 17-8-99

सत्रप्र0क्र0-122/99

द्वितीय अपर सत्र न्यायाधीश सत्र न्यायालय योगेश माथुर जगदलपुर

A.P.R.

(18)

1/09/

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.2906 of 1999

Lakhmu

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 1st SEPTEMBER, 2006

Sd/-
JUDGE
1-9-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.2906 of 1999

Lakhmu

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. Sachin Singh Rajput, Adv. — For the appellant.

Mr. U.N.S. Deo, Addl. Public Prosecutor
with Mr. M.P.S. Bhatia, Panel Lawyer — For the respondent

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 1st September, 2006)

As per L.C. Bhadoo, J: -

1. This appeal is directed against the judgment of conviction and order of sentence dated 17th August, 1999 passed by learned 2nd Additional Sessions Judge, Jagdalpur in Sessions Trial No.122/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing the murder of Badda, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year.

2. The prosecution case, in brief, is that in the evening of 21.1.1999 the accused/appellant along with deceased Badda

and his mother Metki Bai went to see the village fair to Village Jhitkapara, however, the accused/appellant returned from the village fair prior to the deceased. The accused/appellant gave money to the deceased and asked him to bring gram for him. After returning to the house, deceased Bada, after informing his mother, went to the house of accused/appellant in order to give him his gram. When deceased handed over the gram to accused/ appellant, he inquired from the deceased as to why he has eaten away his gram, on which some altercation took place between the two, accused/appellant picked up the axe and attacked on the head of Badda, as a result of which Badda received fatal injury, he fell down on the ground and succumbed to the injury. Accused/appellant after throwing the axe fled away from the scene of occurrence. Incident was witnessed by Metki Bai (PW-4)-mother of deceased as also PW-3 Poyami Hadmo. In the night when the father of deceased namely Jagra (PW-1) returned to the house, Mitki Bai informed him about the incident, on which Village Kotwar was informed and on the next day morning matter was reported to the Police Station Frazerpur. On receiving the report, the Station House Officer, Police Station Frazerpur registered the F.I.R. (Ex.P-1) for commission of offence under Section 302 of the I.P.C., left for the scene of occurrence and prepared the panchnama (Ex.P-5) of the dead body of deceased Badda. Blood stained soil, plain soil, axe-weapon of offence and one plastic bag were taken into possession by the Investigating Officer under Ex.P-6. Dead body of deceased Badda was sent for post mortem examination to the Government Hospital, Jagdalpur, where Dr. K. Vinaykumar (PW-5) conducted the post mortem on the body of deceased,

prepared the postmortem report (Ex.P-2) in which he opined that the cause of death is coma due to head injury.

3. After usual investigation, charge sheet was filed against the accused/appellant in the Court of learned Additional Chief Judicial Magistrate, Jagdalpur who in turn committed the case to learned Sessions Judge, Jagdalpur, from where learned 2nd Additional Sessions Judge, Jagdalpur received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined seven witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

4. Learned 2nd Additional Sessions Judge after hearing learned Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused/appellant in the manner, as mentioned in Para-1 of this judgment.

5. We have heard Mr. Sachin Singh Rajput, learned counsel for the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

6. Homicidal death of deceased Badda has not been disputed by learned counsel for the accused/appellant. Apart from that from the medical evidence of Dr. K. Vinaykumar (PW-5), who conducted the postmortem on the body of deceased and from the ocular evidence of eyewitnesses namely Mitki Bai (PW-4) & Poyami Hadmo (PW-3), it is established that the death of deceased Badda was homicidal in nature.

7. As far as involvement of the accused/appellant in crime in question is concerned, the conviction of accused is based on

the evidence of eyewitnesses namely PW-3 Poyami Hadmo & PW-4 Mitki Bai. PW-4 Mitki Bai has stated in her evidence that on the fateful day she along with her son Badda and daughter Budki went to see the village fair. Accused also went to see the village fair, however, he returned to his house before them. Accused asked his son to purchase gram for him and when they returned to their house, her son Badda went to the house of accused-Lakhmu in order to handover him the gram. When he handed over the gram to accused, the accused inquired about the fact that as to why he has eaten away his gram, thereafter, some altercation took place between them and accused attacked her son with the axe as a result of which he fell down, which was witnessed by her. On seeing this, she raised the screams, but accused Lakhu fled away from the scene. At that time, Poyami Hadmo (PW-3) came rushing towards them and when in the night her husband returned, she apprised him about the incident. PW-3 Poyami Hadmo has also corroborated the above evidence and stated that accused attacked the deceased Badda with an axe on his head.

8. Learned counsel for the accused/appellant argued that PW-4 has stated that Poyami Hadmo came rushing towards the incident, whereas, PW-3 Poyami Hadmo has stated in his evidence that at about 8 p.m. in the night he was at his residence, the accused was running away after attacking the deceased and thereafter, he went to the place of occurrence. Therefore, there is contradiction in the evidence of these two witnesses regarding presence of Poyami Hadmo (PW-3) on the scene of occurrence.

9. We have perused the evidence of these two witnesses, in the first instance, there is no contradiction in the statement of these two witnesses, as has been argued by learned counsel

for the accused/appellant, for the reason that PW-4 Mitki Bai has stated that when she raised the screams, PW-3 came rushing towards her side and same thing has been stated by PW-3 that he saw that accused was running away after attacking the deceased. He has not stated that he was already present on the scene of occurrence. As such, we do not find any substance in the argument of learned counsel for the accused/appellant. Even otherwise, learned counsel for the accused/appellant has not been able to successfully assail the veracity of the evidence of PW-4 Mitki Bai, mother of deceased, who has stated that she witnessed the incident in question. Therefore, in view of this ocular evidence, the involvement of accused/appellant in the crime in question is established and to that extent, we do not find any illegality or infirmity in the judgment of the trial court.

10. Learned counsel for the accused/appellant argued that even if the prosecution case is accepted as it is, then also the prosecution has not been able to establish against the accused the commission of offence under Section 302 of IPC. He further submitted that from the evidence it has come on record that when the deceased eaten away the grams of accused, some altercation took place between them and without any pre-meditation in a sudden fight in the heat of passion the accused picked up the axe and attacked the deceased, therefore, the case of accused/appellant is covered under Exception-4 of Section 300 of IPC. As such, the offence against the accused/appellant does not travel beyond Section 304 Part II of the IPC.

11. On the other hand, learned Additional Public Prosecutor supports the judgment of the trial court.

12. In order to attract the provisions of Exception Fourth of Section 300 IPC it has to be established that the crime in question was committed without premeditation, in a sudden fight in the heat of possession upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner. As has been held by the Hon'ble Apex Court in the matter of **Sandhya Jadhav V State of Maharashtra** reported in **2006 Indlaw SC 107** that "the Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The exception is founded upon the principle, that there is absence of premeditation and it is done in the heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. In Exception 4 in whatever manner the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side, the homicide committed is then clearly not traceable to unilateral provocation. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had no aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. It takes two to make a fight. Heat of Passion requires that there must be no time for the passions to cool down. Therefore, in order to attract the provisions of Exception-4, there must be sudden fight between two i.e. accused & deceased.

13. On the above principle, if we examined the evidence of present case, as per evidence of PW-3 Podyami Hadmo when deceased went to the house of accused and handed over the

gram, the accused asked the deceased as to why he has eaten away his gram, on which some altercation took place between the two and accused all of a sudden without any premeditation picked up the axe and attacked the deceased on his head and fled away from the scene of occurrence. It shows that in the first instance, the gram were eaten by the deceased, thereafter, some altercation took place between two which enraged the accused and he lost his sense in anger and picked up the axe and attacked the deceased and ran way. Therefore, the act of the accused was without premeditation or his act does not come within the purview of cruel or unusual manner. As such, we are of the considered opinion that the case of appellant is covered under Exception-4 of Section 300, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part II of IPC, as there was no previous enmity between the two and accused gave money to deceased for brining gram for him, they were on good terms, however, on account of some altercation at the time of incident between the two on a trivial issue the accused all of sudden picked up the axe and attacked the deceased, which resulted fatal to the life of deceased and he died spontaneously.

14. In the result, the finding of the trial court to the extent of conviction under Section 302 of IPC cannot be sustained, therefore, the appeal partly succeeds. Conviction & sentence imposed upon the accused/appellant under Section 302 of IPC are set aside and instead thereof, accused/appellant is convicted under Section 304 Part II of IPC and sentenced to undergo R.I. for 7 years. The accused/appellant, as per judgment of trial court, is in custody since 31.1.1999, thereby he has already undergone the sentence awarded, as such he be released forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge